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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/060,710	01/30/2002	Joseph Vistitsky	30193/10000	8200

4743 7590 05/27/2003

MARSHALL, GERSTEIN & BORUN  
6300 SEARS TOWER  
233 SOUTH WACKER  
CHICAGO, IL 60606-6357

EXAMINER

MORRISON, NASCHICA SANDERS

ART UNIT

PAPER NUMBER

3632

DATE MAILED: 05/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/060,710

Applicant(s)

VISTITSKY ET AL.

Examiner

Naschica S Morrison

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 January 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-51 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-51 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 January 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

This is the first Office Action for serial number 10/060,710, Upper Body Support Device, filed on January 30, 2002. Claims 1-51 are pending.

#### ***Drawings***

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters "28" and "38" in Figure 5 have both been used to designate the belt. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "means for detachably attaching" as recited in claim 15 and "means for removably fastening" as recited in claim 26 must be shown or the features canceled from the claims. No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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Claims 16-30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 16 recites the limitation "said weight" in lines 1-2. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 6, 9-14, 31-33, 36, 37, 40, 41, 44-47, 50 and 51 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 4,938,439 to Fried et al. (Fried). Regarding claims 1-3, 6, 9-14, and 31-33, Fried discloses a body support device (Fig. 1) comprising: a first portion (10b) of a first variable thickness and having an inner side (at 14 generally) and outer side (at 18 generally); a second portion (10a) of a second variable thickness having an inner side (at 20 generally) and an outer side (at 16 generally), the first and second thickness being different; wherein the inner side (14) of the first portion (10b) and the inner side (20) of the second portion (10a) define an underside portion adapted for frictional engagement with a surface to maintain the body support thereon, and the outer side (18) of the first portion and the outer side (16) of the second portion define an upper side portion; wherein the underside portion is shaped for

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height and distance adjustable placement of the body support device on an edge portion of an elevated surface and the upper side portion comprises a flexible, water resistant material (col. 4, lines 19-21); and wherein placement of the inner side (14) of the first portion on top of the elevated surface and the inner side (20) of the second portion on the side of the elevated surface provides upper body support for a person leaning (when standing or seated) on the outer side (16) of the second portion (10a), or alternately, placement of the inner side (20) of the second portion on top of the elevated surface and the inner side (14) of the first portion on the side of the elevated surface provides upper body support for a person leaning (when standing or seated) on the outer side (18) of the first portion (10b). Regarding claims 36, 37, 40, 41, 44-47, 50 and 51, the method steps recited therein are deemed to be anticipated by the functions of the structure of the apparatus applied above.

Claims 1, 7, 9-14, 31, 34, 36, 37, 39, 40, 44-47, and 49 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 5,170,971 to Schaeffer et al. (Schaeffer). Regarding claims 1, 7, 9-14, 31, and 34, Schaeffer discloses a body support device (Fig. 5) comprising: a first portion (24 generally) of a first variable thickness and having an inner side and outer side (at 24 generally); a second portion (30 generally) of a second variable thickness having an inner side (adjacent 16 generally) and an outer side (at 30 generally), the first and second thickness being different; wherein the inner side of the first portion (24) and the inner side of the second portion (30) define an underside portion adapted for frictional engagement with a surface and further include means for removably fastening (16) the body support to a

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surface, and the outer side of the first portion (24) and the outer side of the second portion (30) define an upper side portion; wherein the upper side portion comprises a flexible, water resistant material (col. 2, lines 54-59); and wherein placement of the inner side of the first portion (24) on top of the elevated surface and the inner side of the second portion (30) on the side of the elevated surface provides upper body support for a person leaning (when standing or seated) on the outer side of the second portion (30), or alternately, placement of the inner side of the second portion on top of the elevated surface and the inner side (24) of the first portion on the side of the elevated surface provides upper body support for a person leaning (when standing or seated) on the outer side of the first portion (24). Regarding claims 36, 37, 39, 40, 44-47, and 49, the method steps recited therein are deemed to be anticipated by the functions of the structure of the apparatus applied above.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4, 5, 38 and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fried in view of Japanese Patent 11206537 to Kobayashi et al. (Kobayashi). With regards to claims 4 and 5, Fried discloses the body support as applied above, but does not teach the body support device including a weight.

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Kobabyashi discloses a body support device (1) comprising a plurality of cavities having weights (7) therein. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the first and second portions (10b, 10a) of the body support device to include cavities having weights therein because one would have been motivated to have provided a magnetic treatment effect for the portion of the person's body leaning on the device as taught by Kobayashi (see English Abstract). Regarding claims 38 and 48, the method steps recited therein are deemed to be made obvious by the functions of the structure of the apparatus applied above.

Claims 4, 5, 38 and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schaeffer in view of Japanese Patent 11206537 to Kobayashi et al. (Kobayashi). With regards to claims 4 and 5, Schaeffer discloses the body support as applied above, but does not teach the body support device including a weight.

Kobabyashi discloses a body support device (1) comprising a plurality of cavities having weights (7) therein. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the first and second portions (10b, 10a) of the body support device to include cavities having weights therein because one would have been motivated to have provided a magnetic treatment effect for the portion of the person's body leaning on the device as taught by Kobayashi (see English Abstract). Regarding claims 38 and 48, the method steps recited therein are deemed to be made obvious by the functions of the structure of the apparatus applied above.

Claims 8 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fried in view of U.S. Patent 5,199,124 to Klemis. With regards to claims 8 and 35, Fried discloses the body support as applied to claims 1-3, 6, 9-14, 31-33, 36, 37, 40, 41, 44-47, 50 and 51 above, but does not teach the body support device including belt receiving means. Klemis discloses a body support device (10) comprising a means (aperture within 20 as shown in Fig. 4) for receiving a belt (12). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the body support device to include a belt receiving means because one would have been motivated to have provided a means for holding the body support device in place in relation to the user's body as taught by Klemis (col. 2, lines 44-46).

Claims 15, 16, 19-25, 28-30, 42, and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fried in view of U.S. Patent 5,360,017 to Austin. With regards to claims 15, 16, 19-25 and 28-30, Fried discloses the body support as applied to claims 1-3, 6, 9-14, 31-33, 36, 37, 40, 41, 44-47, 50 and 51 above, but does not teach the first and second portions (10b, 10a) being detachably attached to one another. Austin discloses a body support device (10) comprising a plurality of portions (12, 16, 18) that are detachably attached to one another by a releasable fastener (24). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have formed the first and second portions as separate, independent parts, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. It would also have been obvious to one of ordinary skill in the art at the time the invention was made to have provided a means for detachably



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attaching the first portion to the second portion because one would have been motivated to permit selective assembly as taught by Austin. Regarding claims 42, and 43, the method steps recited therein are deemed to be made obvious by the functions of the structure of the apparatus applied above.

Claims 15, 16, 19-26 and 28-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schaeffer in view of U.S. Patent 5,360,017 to Austin. With regards to claims 15, 16, 19-26 and 28-30, Schaeffer discloses the body support as applied to claims 1, 7, 9-14, 31, 34, 36, 37, 39, 40, 44-47, and 49 above, but does not teach the first and second portions (24, 30) being detachably attached to one another. Austin discloses a body support device (10) comprising a plurality of portions (12, 16, 18) that are detachably attached to one another by a releasable fastener (24). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have formed the first and second portions as separate, independent parts, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. It would also have been obvious to one of ordinary skill in the art at the time the invention was made to have provided a means for detachably attaching the first portion to the second portion because one would have been motivated to permit selective assembly as taught by Austin.

Claims 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fried in view of Austin and further in view of Kobayashi. With regards to claims 17 and 18, Fried in view of Austin discloses the body support as applied to claims 15, 16, 19-25, 28-30, 42, and 43 above, but does not teach the body support device including a

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weight. Kobabyashi discloses a body support device (1) comprising a plurality of cavities having weights (7) therein. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the first and second portions (10b, 10a) of the body support device to include cavities having weights therein because one would have been motivated to have provided a magnetic treatment effect for the portion of the person's body leaning on the device as taught by Kobayashi (see English Abstract).

Claims 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schaeffer in view of Austin and further in view of Kobayashi. With regards to claims 17 and 18, Schaeffer in view of Austin discloses the body support as applied to claims 15, 16, 19-26 and 28-30 above, but does not teach the body support device including a weight. Kobabyashi discloses a body support device (1) comprising a plurality of cavities having weights (7) therein. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the first and second portions (24, 30) of the body support device to include cavities having weights therein because one would have been motivated to have provided a magnetic treatment effect for the portion of the person's body leaning on the device as taught by Kobayashi (see English Abstract).

Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fried in view of Austin and further in view of Klemis. With regards to claim 27, Fried in view of Austin discloses the body support as applied to claims 15-25, 28-30, 38, 42, and 43 above, but does not teach the body support device including belt receiving means.

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Klemis discloses a body support device (10) comprising a means (aperture within 20 as shown in Fig. 4) for receiving a belt (12). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the body support device to include a belt receiving means because one would have been motivated to have provided a means for holding the body support device in place in relation to the user's body as taught by Klemis (col. 2, lines 44-46).

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:


2626163 to Scantlebury; 3305878 to Hellbaum; 3550159 to Alarco;  
3680917 to Harris; 3725188 to Kalt; 3915528 to Glickman;  
4235472 to Sparks et al; 4877673 to Eckel et al; 4903686 to Jennings;  
4905330 to Jacobs; 4987625 to Edelson; 5040757 to Benaway;  
5208084 to Rutz; 5432967 to Raftery; 5491851 to Alonso;  
5632050 to Zajas et al; 5639072 to McCall; 5809597 to Shaw;  
5950260 to Dees; D413875 to Lawrence; 6523201 to De Michele;  
2003/0084513; JP 11019233 to Yamaguchi

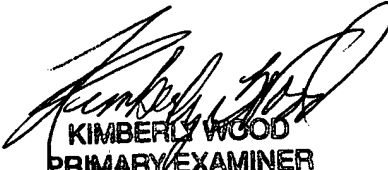
The above references disclose pad/cushion devices relevant to Applicant's invention.

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Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Naschica S. Morrison, whose telephone number is (703) 305-0228. If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Leslie Braun can be reached at 703-308-2156. The fax machine telephone number for the Technology Center is (703) 872-9326 (formal amendments) or (703) 872-9327 (After Final amendments).

Any inquiry of a general nature or relating to the status of this Application should be directed to the Technology Center receptionist at (703) 872-9325.

  
Naschica S. Morrison  
Patent Examiner  
Art Unit 3632  
5/16/03

  
KIMBERLY WOOD  
PRIMARY EXAMINER